

**Idaho Department of
Juvenile Corrections
Administrative
Policy/Procedure**

<u>NUMBER</u>	<u>REVISED</u>	<u>REVIEWED</u>
910	07/22/13	07/22/13
<u>FORMERLY</u>	<u>EFFECTIVE</u>	<u>PAGES</u>
none	08/05/13	11

SUBJECT: INVESTIGATIONS – ADMINISTRATIVE

APPROVED: 
SHARON HARRIGFELD, DIRECTOR

CATEGORY: LEGAL

Policy

Ensuring that employees adhere to the policies and procedures of the Idaho Department of Juvenile Corrections (IDJC) by providing formal procedures to investigate alleged misconduct is essential in upholding the public trust and confidence in the department. An investigations policy is found to maintain effective and productive programs and facilities and also allows appropriate corrective actions to be implemented when evidence of misconduct is found.

It is therefore the policy of IDJC that, upon request of the Director, and under direction of the Deputy Attorney General (DAG), investigations shall be conducted according to the procedures below in an impartial, objective, confidential, and expeditious manner.

Procedure

- I. Confidentiality / Privacy
 - A. All investigations are work product of the DAG and will be treated as such with regard to confidentiality and disclosure. Confidentiality must be maintained throughout the investigation as well as once the investigation has concluded. No aspect of the investigation should be discussed with anyone other than the DAG, the Director, Human Resources or law enforcement (if involved) without prior approval of the DAG directing the investigation.
 - B. The contents of the investigation will be uploaded to the appropriate file in the DAG folder in the IDJC Data Center. Those contents will be kept confidential and will only be released by the DAG under the following circumstances:
 1. To Human Resources for review.
 2. Upon request of law enforcement.
 3. Upon a court order.
 4. As required by statute, including the Public Records Act and the Prison Rape Elimination Act (PREA).

5. As determined by the Director.

- C. A copy of the final report will be provided to the appropriate Division Administrator (which includes facility Superintendents, Administrative Services and Community Operations and Program Services (COPS) Administrators) unless the circumstances make this inappropriate.
- D. All department-owned offices, desks, lockers, computers and cabinets may be searched at any time as part of an investigation, as stated in the *Inspection of Department Property Policy*. While conducting an authorized investigation and unless otherwise directed, the investigator shall have reasonable, unrestricted access to all department facilities, staff, juveniles, visitors, documents, records (including electronic), and equipment.
- E. Written communication should be in the form of email. All emails shall state "CONFIDENTIAL ATTORNEY WORK PRODUCT" in the subject line prior to being sent. All email communication shall be kept to a minimum and shall be sent to the DAG, and not copied or forwarded to other parties. The only exception would be emails whose sole purpose is for simple correspondence and/or to arrange for an interview or facility visit. Email requested or received by the investigator shall be placed in the DAG file if being retained for the report. (See section III.C.6.b.)
- F. Except as noted in subsection I.A., investigators shall not discuss, communicate or review their findings or opinion with anyone other than the DAG.
- G. All written, recorded and other documents shall be saved in the electronic DAG folder in the IDJC Data Center under the investigator's name with an investigative file name consisting of the last name and first initial of the subject of the investigation and the month and year of the investigation, e.g. *Jones R- 5 13*.

II. Initiation of the investigation

A. Complaint

- 1. A complaint may originate from any source and should contain specific information about the allegation.
- 2. Employees may attempt to resolve a complaint by following the *Problem-Solving Policy* but a person must never be dissuaded from lodging a complaint. In order to protect employees against false allegations, all complainants are encouraged to make complaints in written form. However, anonymous complainants or complaints from persons who wish for their names to be held in confidence will be accepted.

B. Complaint Processing/Inquiry

1. Upon the receipt of a complaint, the Division Administrator may conduct an initial inquiry to assist the Director in determining whether the matter should be referred to the DAG for investigation. The Division Administrator may delegate the initial inquiry to an appropriate person. If the initial complaint is an allegation under the PREA, the Division Administrator shall contact the DAG and the Statewide PREA coordinator and assign the initial inquiry to the Facility PREA Compliance Manager.
2. Any and all facts, documentation, statements and evidence gathered during the initial inquiry shall be sent to the DAG upon completion of the initial inquiry.
3. Upon receipt of a complaint or notification of alleged misconduct and after the initial inquiry, if any, the Director will notify the DAG and may direct that an investigation be initiated. The Division Administrator and Human Resource (HR) Officer will also be notified unless the circumstances are such that notification to the Division Administrator would be inappropriate, such as if the complaint is regarding the Division Administrator.
4. If a contract provider is involved, Quality Improvement (QI) or other appropriate parties will be notified. If it appears that a more extensive investigation is necessary department investigators may be asked to assist with the investigation at contract providers with QI. In the event that department investigators are involved, they will report to the DAG. See Section I.A.
5. Department investigators will also conduct investigations into alleged misconduct at headquarters, district offices or other associated IDJC locations.

C. Notice to Employee

1. For misconduct allegations requiring an investigation, information will be provided to the accused employee using IDJC Form A, "Employee Notification of Investigation." This form shall be given to the employee by the Division Administrator or designee. It will state the general nature of the allegations and the name of the investigator. The employee should sign the Employee Notification of Investigation. The original will be retained for the investigative file and a copy will be given to the employee.
2. Administrative Leave with Pay (ADT)

Human Resources, in consultation with the Division Administrator and the Director, will determine whether the employee who is the subject of allegations, is to be placed on ADT. The ADT letter will be drafted

by Human Resources and will be delivered to the subject employee by the Division Administrator. The employee shall sign the ADT letter. A copy will be given to the employee and a copy will be sent to HR. The original shall be kept in the investigative file.

3. Administrative Leave without Pay (LWO)

LWO will only be utilized for employees who are charged with or convicted of a felony. An appointing authority may suspend an employee without pay upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. (IDAPA 15.04.01.01, Rules of the Division of Human Resources and Personnel Commission, Section 190.04).

D. Administrative Investigation Advisements

1. Witnesses

- a. Department employees identified as potential witnesses shall cooperate fully with the investigation and answer all questions truthfully and completely.
- b. Failure to cooperate is considered misconduct and a violation of policy, and may result in disciplinary action, up to and including dismissal as stated in the *Ethics and Standards of Conduct Policy*.

2. Accused Employee

- a. An employee accused of misconduct or who is the focus of the investigation, must be interviewed during the investigation. The employee shall cooperate fully with the investigation and answer all questions truthfully and completely.
- b. Failure to cooperate is considered misconduct and a violation of policy and may result in disciplinary action, up to and including dismissal, as stated in the *Ethics and Standards of Conduct Policy*.

3. All Employees Being Interviewed

- a. Employees shall be available for interviews as needed. If an interview is scheduled during an employee's time off, it shall be considered paid time.

E. Employee Rights

1. The accused employee will be afforded the presumption of innocence.
2. Investigations will be conducted in a professional and unbiased manner.

3. Accused employees will be informed of the general nature of the investigation as soon as practicable, unless notification will compromise the investigation.
4. An accused employee may request to have an observer or counsel present during an interview, provided:
 - a. That person is available to attend the interview within a reasonable period of time;
 - b. The accused employee and the observer (or counsel) shall be afforded a reasonable amount of time to confer prior to initiating the interview; and
 - c. During the interview, the observer (or counsel) may not interfere with or impede the interview process (Note: The observer or counsel may be excluded from the interview if his or her behavior becomes disruptive).
 - d. No witness or potential witness in the investigation will be permitted to act as an observer;

NOTE: The role of counsel during the interview is primarily that of observer, but he or she may also question or obtain statements from the accused employee at the conclusion of the interview.
5. When the alleged misconduct could be a criminal violation of state or federal law the accused employee will receive and sign an Administrative Investigation Warning (commonly referred to as a Garrity Warning) prior to an investigation interview. (NOTE: IDJC Form B will be used for this advisement). A copy will be given to the employee and the original kept in the investigative file.
6. Upon completion of the investigation, the accused employee will be notified in writing that the investigation has been completed.

III. Investigation

- A. If the original allegation is a criminal act or it appears at any time during the investigation that a criminal act has been committed, law enforcement of the appropriate jurisdiction will be notified to conduct a separate criminal investigation.
 1. If the need for law enforcement is determined during the investigation, the DAG, Human Resources Officer and the Director must be notified immediately.
 2. Investigators will suspend their investigations and coordinate and cooperate with local law enforcement through the conclusion of the criminal investigation or until directed to resume by the DAG.

- B. If, during the course of an investigation, there appears to be a possible violation of the PREA, IDJC's statewide PREA Coordinator will be contacted immediately by the DAG.
1. Unless law enforcement is involved, the investigation does not have to stop. The PREA Coordinator will ensure that the victim and alleged perpetrator are separated to keep the victim safe, or that an appropriate safety plan is in place if separation is not possible.
 2. The agency PREA Coordinator and Facility PREA Compliance Managers are not investigators, but will work with the alleged victims and alleged perpetrators for the purposes of conducting a preliminary inquiry. The preliminary inquiry will gather initial facts to establish the validity and scope of the allegation. If it appears that sexual abuse against a minor has occurred, either by an adult or another minor, law enforcement must be contacted within twenty-four (24) hours according to statute and the investigation or initial inquiry must be suspended.
 3. The PREA Coordinator and Facility PREA Compliance Managers will assure that steps are taken to provide medical and mental health services to possible victims, as well as corrective actions to minimize the possibility of another, similar incident.
 4. Any additional investigation will continue to be the responsibility of the assigned investigator.
 5. If a PREA inquiry reveals an issue that might require further investigation, or personnel issues that may need to be addressed, the statewide PREA Coordinator will contact his or her supervisor, HR Officer, the DAG and advise the Director.
- C. All investigations shall be conducted in a reasonable amount of time and in a professional and unbiased manner. Investigators' duties and responsibilities include:
1. Determine a plan for conducting the investigation.
 - a. Review allegations and identify specific issues to be investigated.
 - b. Review any pertinent personnel and/or training records.
 - c. Identify potential witnesses and determine who will need to be interviewed and in what order.
 - d. Identify what evidence may exist to be collected and preserved.

- e. Determine what resources will need to be accessed or utilized. If necessary, obtain permission to access emails and/or website information.
2. Contact parties involved in the investigation.
- a. Contact the Division Administrator or QI and the appropriate individual at contract providers to make arrangements to visit the facility or location and conduct interviews. If a department investigator is involved, he or she will report to the DAG. See Section I.A. The visit and interviews should occur as soon as possible after the investigator has been notified of the need for an investigation. If the investigation is at headquarters, district offices or another associated IDJC location, contact the appropriate Division Administrator.
 - b. Schedule interviews with identified witnesses and principals.
 - c. When it is necessary to interview juveniles, contact their Juvenile Service Coordinator or Group Leader, as appropriate, to determine if, when, and how to conduct the interview based on treatment or program concerns. Issues, such as mental illness, violent tendencies and behavior should be taken into account before interviewing the juvenile. It may be necessary or appropriate for the juvenile to have a supportive staff member present for the interview.
3. Conduct interviews.
- a. When possible interviews shall be conducted at a reasonable time when staff is on-duty, unless the seriousness of the matter, impossibility or other investigative concern such as confidentiality requires an alternate time.
 - b. All interviews will be digitally recorded by the investigator.
 - i. The recording shall begin with the interviewer's stated name, the name of the person being interviewed, and the time, date, and location of the interview.
 - ii. Pursuant to the *Ethics and Standards of Conduct Policy*, it is a violation for staff to record conversations without prior permission of the Director. The investigator shall ask the persons being interviewed if they are recording the interview and if they are, ask them to stop.
 - iii. Upon completion of the interview, all recordings shall be uploaded to the DAG folder in the IDJC Data Center under the investigator's name.

- c. After beginning the recording but prior to asking any questions, investigators shall have any person being interviewed read and sign the "Statement of Confidentiality". (IDJC Form C) Juveniles being interviewed do not need to sign this form.
 - i. Additionally, when the alleged conduct involves, or could reasonably lead to a criminal investigation, the "Administrative Investigation Warning" (IDJC Form B-Garrity Warning) should be read, reviewed and signed by the employee being interviewed to compel him or her to provide truthful responses to questioning.
 - ii. The original of all signed documents shall be kept in the investigative file and copies given to the employee.
- 4. Identify and Maintain Evidence:
 - a. Physical evidence
 - i. All physical evidence shall be collected and sealed in an evidence envelope.
 - ii. Once the envelope has been sealed, it must be properly labeled and the chain of custody shall be maintained on the envelope.
 - iii. Any time the envelope is unsealed and/or the evidence is inspected it must be properly noted on the chain of custody on the face of the envelope.
 - iv. If an object is too large or is otherwise unable to be preserved in the evidence envelopes provided, it will be placed in an appropriate container and sealed. An evidence envelope should then be affixed across the seal and filled out as specified above recording the chain of custody.
 - v. If it appears that the evidence at the scene might be of importance to law enforcement officials, ensure that the scene is preserved, but do not touch or disturb the evidence until law enforcement has completed its review of the scene.
 - b. Notes and information
 - i. All notes, both written and electronic, shall be preserved for use in preparing a final report as well as for future recollection of the investigation.

- ii. Email requested or received by the investigator shall be placed in the DAG file if being retained for the report. (See section III.C.6.b.)

c. Photographs

The investigator may use his or her personal camera for the investigation, but as soon as possible the investigator must upload the pictures to the electronic DAG folder in the IDJC database and erase the photos from the personal camera.

5. Report

- a. A narrative report detailing all interviews conducted and describing all evidence collected shall be written by the Investigator, using Investigation Report Form D and shall include the following:

- i. A chronological narrative of the investigator's efforts and results

- ii. A detailed summary of each interview conducted.

- (1) Each interview shall have a separate summary.

- (2) The summary shall begin by identifying the person interviewed and the time and date of the interview.

- (3) The interview summary should include all pertinent details of the interview and any impressions or notes the investigator obtained.

- iii. A description of any evidence collected including where, when, and why it was collected and where it is was stored.

- b. The following shall not be included in investigation reports:

- i. Any conclusions of a legal nature.

- ii. Any identification of disciplinary action the investigator believes should or should not be taken.

6. Conclusion of investigation

- a. Investigators will sign the Investigation Report form, will seal it in an envelope marked "CONFIDENTIAL", and deliver it to the DAG directing the investigation.

- b. Investigators shall ensure that all recordings of interviews, any photographs or videos, and an evidence or exhibit list are

placed in the electronic DAG folder with the electronic copy of the report.

- c. Evidence envelopes shall be given to the DAG directing the investigation, noting such on the chain of custody on the envelope.
 - d. Equipment such as digital recorders or unused evidence envelopes should be returned.
 - e. Any unpaid expenses should be submitted, with receipts, to the Legal Assistant, and all expenses charged to the Director's PCA.
- D. The DAG directing the investigation will generate a closing memorandum, which will be copied to the PREA Coordinator if appropriate per the investigation.
- E. The final investigative report and closing memorandum shall be delivered by the DAG to the Director, Human Resources Officer, the Division Administrator, and the agency PREA Coordinator if appropriate.
- F. After the completion of the investigation and receipt of the closing memorandum, the Division Administrator shall follow up with the complainant and inform him or her that the investigation has been completed and appropriate action is being taken. Personnel matters, including disciplinary actions, are confidential.

IV. Qualifications of Investigators

- A. All investigators will be identified by the Director. There will be at least one from each state facility and two other staff members from any location. Whenever possible the department will have facility investigations performed by staff from a different facility or location.
- B. Each investigator shall be fingerprinted and pass a criminal background check pursuant to the *Criminal History Background Checks Policy*.
- C. Each investigator will take at least one basic investigative training course approved by the DAG before being solely responsible for an investigation. In addition, each investigator will attend investigator meetings or in-house trainings whenever possible. All costs and expenses of these trainings and meetings will be paid by the department, pursuant to fiscal policy and approval by the Director.

References: [Glossary of Terms and Acronyms](#)

Related Policies: *Drug-Free Workplace
Standards of Conduct} or as combined with
Ethics and Values
Respectful Workplace and Harassment
Confidentiality/Privacy
Inspection of Department Property
Use of Information Technology
Prison Rape Elimination Act (PREA)
Criminal History Background Checks
Problem-Solving, Corrective Action and Due
Process for Department Employees*

Related Forms: *Form A: Employee Notification of Investigation DJC-261
Form B: Administrative Investigation Warning DJC-260
Form C: Statement of Confidentiality-Witnesses DJC-259
Form D: PREA Investigation Closing Sheet DJC-262*